

UNITED STATES BANKRUPTCY COURT

Eastern and Western Districts of Arkansas

LOCAL RULE 2015-1

Motor Vehicle Physical Damage Insurance in Chapter 13 Cases

I.

TERMS OF POLICY

The Trustee shall, as soon as reasonably possible, enter into a contract and thereafter maintain a contract, if reasonably possible, with an Insurer to provide motor vehicle physical damage insurance coverage at least as beneficial to the debtors and creditors as described below.

DEFINITIONS

As used in this Rule the following shall have the meaning shown.

**Insurer** - An insurance company chosen by the Trustee, qualified under state law to offer insurance coverage of the type described in this Rule in the State of Arkansas.

**Trustee** - The standing chapter 13 trustee appointed pursuant to a designation by the U. S. Trustee for the Districts of Arkansas, Nebraska and Missouri, dated October 31, 1988 and the ratification and approval of the designation by the Director and Counsel, Executive Office of the United States Trustees, Department of Justice, dated November 1, 1988, or his or her successor.

**Interested Party** - A person or entity which has an insurable interest in a motor vehicle, including a co-owner, secured creditor, co-obligor on a secured loan, and Debtor(s).

**Motor Vehicle** - Any licensed land motor vehicle designed for travel on public roads, except motorcycles, truck type tractors having a gross vehicle weight of 10,000 pounds or more and intended for over the road transportation or delivery of goods or merchandise and recreational vehicles.

**Value or Valuation** - The fair market retail value of the Motor Vehicle as initially determined by reference to publication of the National Automobile Dealers Association.

THE POLICY

1. A Master Policy providing coverage equivalent to a Standard Automobile Physical Damage Insurance Policy.

2. A Certificate of Insurance to be issued to each Interested Party.
3. Coverage for Motor Vehicles having a Value in excess of \$500.00 with a comprehensive deductible of \$50.00, a collision deductible of \$100.00 and maximum coverage per vehicle of \$60,000.00.
4. Coverage to be afforded at a flat rate per \$100.00 valuation without regard to the debtor's age, sex, race, marital status, place of residence, previous driving record or use of the vehicle.
5. The Trustee's Master Policy will not be primary insurance. If there is motor vehicle physical damage insurance other than the insurance provided by the Trustee's Master Policy at the time of loss, then there will be no coverage under the Trustee's Master Policy except as excess and in no event as contributory insurance and then only after all other insurance has been exhausted.
6. Within two days after the date that a Chapter 13 Petition is dismissed or converted by an order of the court, the Insurer shall mail a notice of cancellation under this insurance program to all Interested Parties. Said notice of cancellation shall state that the insurance under this policy shall terminate 30 days after the date set forth in the notice of cancellation which date shall coincide with the date of the mailing of the notice. In the absence of notice of cancellation and except as otherwise provided herein, insurance under this policy shall terminate 30 days after the date of entry of the written order of dismissal or conversion of the Chapter 13 case regardless of actual notice of dismissal.
7. Chapter 13 bankruptcy cases filed prior to the adoption of this Local Rule shall also be eligible for coverage. Any Interested Party who determines that there is no motor vehicle physical damage insurance on a Motor Vehicle in which some interested party has a co-ownership, lien or other insurable interest may move for an Order requesting coverage under the Trustee's Master Policy. If the motion is granted, insurance coverage shall be effective from the date of the Order Adding Insurance and premiums shall begin to be earned from that same date.
8. All claims under the Trustee's Master Policy must be made by sworn proof of loss delivered to the Insurer within 91 days after the insured loss on forms to be supplied by the Insurer.
9. If a debtor has other motor vehicle physical damage insurance coverage at the time of the filing of his Chapter 13 Petition and provides that information to the Trustee, as herein before provided, so as to not be insured under the Trustee's Master Policy and thereafter the debtor's other insurance expires or is revoked, an Interested Party may file a motion to have debtor's motor vehicle insured under the Trustee's Master Policy. If said motion is filed before the termination date of the other insurance, then coverage under the Trustee's Master Policy shall commence on the date of the termination of the other insurance. If said motion is filed after the termination date of the other insurance, then coverage under the Trustee's Master Policy shall commence on the date of the court's order adding the insurance to the debtor's plan.

10. If the debtor purchases a Motor Vehicle and grants a lien on it in favor of a creditor during the course of the debtor's Chapter 13 plan and in such a fashion as to include the creditor in the plan, then insurance coverage under the Trustee's Master Policy on such motor vehicle shall commence on the date an Order Adding Insurance is entered.

#### COVERAGE

11. Coverage shall automatically be afforded upon filing of a Chapter 13 Petition and continue for the full term of the plan for all Motor Vehicles listed in debtor's Chapter 13 schedules and statement of affairs unless:
  - (a) The debtor provides evidence of other insurance; or
  - (b) There is no Interested Party other than the debtor(s); or
  - (c) The case is dismissed.
12. A debtor(s) may elect to maintain coverage after no other Interested Party exists. A debtor(s) may elect to have coverage even if there is no other Interested Party when the Petition is filed.
13. If a debtor procures motor vehicle physical insurance coverage, other than pursuant to the Trustee's Master Policy, after the date of the filing of the Chapter 13 Petition and provides proof thereof by motion, then insurance coverage under the Trustee's Master Policy shall only be for losses incurred between the time of the filing of the Chapter Petition and the date the debtor procures the other insurance.
14. If a debtor, at or prior to the Section 341(a) meeting, provides proof of motor vehicle physical insurance coverage for losses incurred at the time of and after the filing of the Chapter 13 Petition, then no premium shall be charged for insurance under the Trustee's Master Policy. If the debtor does not provide such proof of insurance coverage, then an insurance premium shall be paid by the Trustee and charged against the debtor as a priority, administrative expense for insurance coverage under the Trustee's Master Policy from the date of filing of the Chapter 13 Petition to the date of the entry of a court order terminating insurance coverage under the Trustee's Master Policy. The Trustee may make motion for such orders as are necessary to increase the debtor's payments under the plan to pay for the insurance required by this local rule.

#### PREMIUMS

15. The Insurer shall have the right to setoff against payment of claims any unpaid insurance premiums due for insurance provided to the debtor under the Trustee's Master Policy.
16. To assure that premiums are timely paid so that coverage will remain in effect, the amount of \$100.00 shall be held as a priority, administrative expense by the Trustee in all Chapter 13 cases with coverage under the Trustee's Master Policy and said amount shall be utilized for the

payment of delinquent premiums.

## **II.**

### **IMPLEMENTATION OF PROGRAM**

During the time the Trustee's Master Policy is in effect, the following procedures shall be followed:

1. The Insurer shall produce an initial report substantially as set forth in Form I - Chapter 13 Motor Vehicle Physical Damage Insurance Program - Initial Report. Such Initial Report (Form I) shall be mailed to the Trustee and each Interested Party.
2. Concurrently with the issuance of Form I, the Insurer shall mail Form II - Interested Party Verification - to each Interested Party.
3. At or before the Section 341(a) meeting, debtor(s) and/or debtor's attorney shall provide to the Trustee written evidence of motor vehicle damage insurance which notes the interest of all Interested Parties in any Motor Vehicle. If written evidence is not so provided, the debtor's plan shall be deemed amended to provide for an additional payment to the Trustee at the monthly premium rate indicated in Form I.
4. The issuance of Form I by the Insurer shall authorize the Trustee to provide a Certificate of Insurance (substantially as Form III - Certificate of Insurance) to Interested Parties. The Certificate of Insurance shall be provided as soon after the Section 341(a) meeting as is reasonably practical.
5. Any debtor shall have the right to cause the insurance which has been issued to be canceled at any time by motion, substantially in conformity with Form IV, for cause, including:
  - (a) Proof of insurance coverage for the Interested Parties;
  - (b) Waiver of coverage by all Interested Parties;
  - (c) Motor Vehicle is inoperable; or
  - (d) Value of Motor Vehicle is less than Five Hundred Dollars (\$500.00).
6. Insurance coverage shall be automatically provided upon motion filed with the Trustee (substantially in conformity with Form V) by an Interested Party stating that there is no insurance on a Motor Vehicle. The plan payments shall be increased after motion by the Trustee by an order substantially in conformity with Form VI.
7. A debtor(s) may choose to continue to have insurance coverage under the Master Policy after all Interested Parties have been paid in full by filing an affidavit with the trustee substantially in conformity with Form VII. The plan payments shall be increased after motion by an order substantially in conformity with Form VIII.

8. A creditor who has a lien or security interest in motor vehicle may file an election with the Trustee that the creditor does not want any of its borrowers to be able to purchase insurance under the Trustee's Master Policy. If a creditor files such an election (see Form IX), the provisions of this Local Rule shall not be applicable to any motor vehicle in which the creditor has a lien or security interest in any case filed thereafter. Insurance coverage pursuant to this Local Rule shall continue in all cases pending at the time a creditor's election is filed. If after having filed such an election, the creditor revokes its election (See Form X), then the Local Rule shall be in effect as to all cases in which the creditor has a lien or security interest in a motor vehicle filed subsequent to the revocation of the election and this Local Rule shall become retroactively applicable to all pending cases in which the creditor has a lien on or security interest in a motor vehicle as if the case were filed on the day the creditor revokes the election.

(adopted 7/1/90)